IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 735/2005
(Kanti Lal & Ors. Vs. State of Rajasthan)

Date of Order : 19/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Mridul Jain for the petitioners.
Mr. J.P.S.Choudhary, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter), the petitioners, who are facing trial for the offence under Section 3/7 of the Essential Commodities Act (for short 'the Act' hereinafter), seek quashing of proceedings solely on the ground of delay in the trial.

I have heard learned counsel for the petitioners and public prosecutor for the State. Carefully gone through the record of the trial court.

It appears that the trial had already been concluded once and by judgment and order dated 30.4.1987 passed by Special Judge, (Essential Commodities Act) Dungarpur, the

petitioners were convicted and sentenced for the offence under Section 3/7 of the Act. Against the judgment and order dated 30.4.1987, the petitioners preferred three separate appeals before this Court assailing the judgment and order on the ground that sub-section (3) of Section 326 of the Code provides that in a case of summary trial, the statement of witnesses recorded by the officer cannot be used against the accused on his transfer and the succeeding officer has to hold the de novo trial.

Section 326 (3) of the Code reads as under :-

> "Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under Section 325."

In the instant case, it appears from the record that after launching prosecution, there had been hardly any delay in concluding the trial. It were the petitioners who brought the matter in appeal, and on the contention raised by them, this Court remanded the matter. Thus, it cannot be said that the delay in disposal of the case has occasioned due to the fault of the prosecution. If the petitioners cause the delay in disposing of the case by one way or the other, they cannot take advantage of their own act.

Keeping in view the decisions of Hon'ble Supreme Court in P. Ramachandra Rao Vs. State of Karnataka 2002 (4)

SCC 578 and in Abdul Rehman Antulay and Ors. Vs. R.S.Nayak & Another 1992 (1) SCC 225, in my view no case for quashing the proceedings is made out.

The petition has no force and it is therefore, dismissed. The record of the trial court be returned forthwith.

(H.R.PANWAR),J.

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